

Panaji, 12th December, 1991 (Agrahayana 21, 1913)

SERIES II No. 37

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

### EXTRAORDINARY

#### GOVERNMENT OF GOA

Department of Labour

#### ORDER

No. 28/6/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.  
*Subhash V. Elekar*, Under Secretary (Labour)  
 Panaji, 20th July, 1990.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding  
Officer)

Ref. No. IT/7/90

Shri Ramkrishna Devidas & — Workman  
 3 Others  
 V/s  
 M/s Prashant Polyconcrete Products  
 Private Limited — Employer

Panaji, Dated : 12-6-90.

#### A W A R D

This is a reference made by the Government of Goa by its order No. 28/6/90-LAB dated 9th March, 1990 with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s. Prashant Polyconcrete Products (P) Limited, Boma, Kundaim-Goa, in terminating the services of the following workmen with effect from 9.5.1989 is legal and justified ?

- (1) Shri Ramkrishna Devidas, Trainee.
- (2) Shri Prashant Gaonkar, Trainee.
- (3) Shri Sanjay Parab, Trainee.
- (4) Shri Kalidas R. Gaonkar, Trainee.

If not, to what relief each of the above workmen are entitled ? "

As stated in the above Government reference, this is a Government reference regarding the termination of the service of the five workmen. After the matter was registered and notices were issued to the parties the Works Manager of the Company by name K. G. Agshiker filed on 10.5.90 a memo of settlement with the union dated 25.10.90. The Labour leader Mrs. Luiza Pereira filed an application on 12.4.1990 that she was unable to file the Claim Statement on behalf of the workmen for want of papers. Thereafter she remained absent and in the meanwhile the memo of settlement was filed before me and hence again a notice was issued to her and she received the notice before 12.6.90 and she remained absent on 12.6.90. It therefore appeared that the union had nothing to urge in the matter.

So the statement of the Works Manager Avinash Agshikar was recorded today. He has proved the memo of settlement dated 25.10.89 which has been signed by the Union Secretary by name Anand Betkikar and other local members. The witness has countersigned it.

According to him all the four workmen settled the matter with them through the union. According to him two of the retrenched workmen by name Prashant Gaonkar and Kalidas Gaonkar were to be given preference when fresh recruitment was made. Accordingly, in February this year when fresh recruitment was made these two workmen were given the first choice. However they did not come to rejoin the service because they were employed elsewhere. The management waited for them for 15 days and employed other persons to their place. So there is no question of re-employment of these two

persons as the clauses 1 and 2 of the memo of settlement dated 25.10.89. About the remaining two workmen by name Sanjay Parab and Ramkrishna Devidas they were to be paid compensation for 30 days salary and 45 days salary respectively. The management witness Agshikar stated that the company will pay the compensation as per the clause 4 of the settlement after the award is passed. So, so far as the four workmen are concerned the termination of their services is to be held just and proper and I pass the following order :

#### Order

It is hereby held that the action of the management of M/s Prashant Polyconcrete Products (P) Limited is just and proper in the circumstances of the case.

As relieved the management shall pay the compensation to the workmen as per clause 4 of the settlement.

There shall be no order as to costs.

Inform the Government accordingly about the passing of the award.

S. V. Nevagi  
Presiding Officer  
Industrial Tribunal.

#### Order

No. 28/23/83-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.  
Subhash V. Elekar, Under Secretary (Labour).  
Panaji, 13th December, 1989.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/22/84

Shri P. S. Guruv — Workman/Party I  
V/s  
M/s. V. N. S. Engineering & Services Company. — Employer/Party II  
Employer represented by Adv. B. G. Kamat.  
Workman in person.

Panaji, Dated : 11-11-1989.

#### AWARD

This is a reference made by the Govt. of Goa, by its order No. 38/23/83-ILD dated 24th April, 1984 with an annexure scheduled thereto which reads as follows:

"Whether the action of the employer, M/s. V. N. S. Engineering and Services Company, Margao, Salcete-Goa, in terminating the services of Shri P. S. Guruv, Sales Assistant w.e.f. 22-1-1983 is legal and justified?

If not, to what relief the said workman is entitled to?"

This matter of industrial dispute where the workman is fighting his own case has a chequered career and history. As seen from the above Government reference the point in dispute is as regards the termination of the service of the workman who joined the services of the Partnership Firm as a Sales Assistant. The Partnership Firm was a dealer in Kirloskar Engines being the sole distributor for Goa region and the applicant joined its services on 31-5-82 by letter of appointment Exb. W-1. His services were terminated on 22nd January, 1983 and the total period of service put up by the workman as seen from the records including sundays and holidays is 235 days. With these facts and evidence on record it has to be seen whether the termination of the services of the workman is just and proper in the circumstances of the case. While considering the rival contentions of the parties it would be necessary to study the different stages through which this matter has gone till this date of award.

The Government reference was received on 16-5-84. The statement of claim Exb. 2 was filed on 20-6-84. The Written Statement Exb. 3 was filed by employer on 25-7-84 and the same was signed by its partner Shri R. V. Sarmalkar. As stated above the question involved in the case was regarding the termination of the services of the workman and the management had claimed that the termination was just and proper in the circumstances of the case. My Predecessor by his order dated 3-10-84 held that the points at dispute were duly and properly covered by the Govt. reference and no separate issue nor additional issue was necessary and he passed the order accordingly. The record shows that Shri R. V. Gaitonde, the Labour Consultant for the management by the Written Arguments submitted before my Predecessor that the order of termination was neither malafide nor illegal as contented in para 16 and 23 of the claim statement but the order was just and proper in terms of the contractual power under clause 8 of the letter of appointment. The management had thus justified the order of termination claiming it to be legal. To this the representative of the workman filed the written arguments dated 29th March, 1985 claiming that the stand is clarified in para. 16 to 23 of the claim statement and the order of termination is improper and illegal. Thereafter my Predecessor went on considering the matter and he passed an award on 9-5-85 holding that the action of the employer is illegal and not justified. He therefore directed reinstatement with continuity of service. The mana-

gement took up the matter before the Goa Bench of Bombay High Court and their lordships Dr. Couto & Kamat, JJ. allowed the writ petition No. 235 and quashed and set aside the order of my Predecessor and remanded the matter back to this Tribunal with a direction to dispose off the matter afresh in the light of the observations made in the foregoing paragraphs of the judgment. This is how the matter came up before me for a fresh hearing and the evidence of the partner of the Firm N. V. Neurenkar is recorded on 19-8-89 and the evidence of the workman P. S. Gurav is recorded on 12-5-89. Some documents are produced by the management and the documents are well admitted and the submissions were heard on the basis of the evidence that was led before me and as already stated above the workman is defending his case by himself and two adjournments were given to him to come prepared for the arguments giving him full idea of legal points involved in the matter and what he has to say by way of arguments as regards the point in the matter.

The workman has made out only one point before me that his appointment was for a probation period of 6 months but before the expiry of the probationary period the management issued a letter of confirmation. Hence according to him the issuance of the letter of confirmation automatically envisages that he was confirmed in service and as such his services cannot be terminated in this fashion without any enquiry being held against him and any Inquiry Officer being appointed against him to go into the lapses if any alleged against him. It is on record that this is not a case of termination based on any allegation or any charge of dereliction of duty but this is a case made out by the management with a firm statement that the management had the right to appoint a person as an employee and so also had the right to terminate the services of an employee provided the law permitted the management to do so. The arguments of the management revolve around this point and I shall go through the line of arguments adopted by the management to see how far there is truth in the submissions made on behalf of the management.

Admittedly the workman joined the services as Sales Asst. on 1-6-82 and his services were terminated on 22-1-83 viz. within less than 8 months and as per the calculations the total period of service rendered by the workman with the industry is 235 days. So on the well admitted facts the case does not fall within the ambit of Sec. 25F of the I.D.A. relating to retrenchment. The section itself starts with a negative approach stating that no workman employed in an industry who has been for continuous service for not less than 1 year shall be retrenched etc., and there are provisos a, b and c with which now we are not concerned.

Here the stress is on the continuous service of one year and under the case law we know that the continuous service should be 240 days or more including sundays and holidays. The service of the workman falls short of the statutory period of 240 days and so it is not a case falling in the Sec. 25F of the Act and so the workman will not be entitled to retrenchment

compensation or other reliefs as envisaged under the sub. clause a, b and c of Sec. 25F of the Act. The negative form adopted by the provision coupled with the word "Until" which introduces the three conditions indicates that the condition must be satisfied before retrenchment can be validly effected. This is what the Supreme Court has observed in the case of Bombay Union of Journalists v/s. State of Bombay 1964, I. L.L.J., page 351. We however, need not consider these principles because the present case is not a case of retrenchment but this is a case of termination of services by the management of a workman who has just put up a service of less than 240 days as is clear from the record. My Predecessor by his rather interperate order had cast the burden on the management to prove that the action of the management is just and legal. While reversing this order his lordship of the Bombay High Court observed that my Predecessor was not right in holding that the burden was lying on the employer to prove whether the termination of services of the workman was legal and justified. In this regard reliance was placed on an authority in the case of Airtech Pvt. Ltd., reported in 1984 (49) FLR page 38. In that case it was clearly held that the burden that the termination was not legal and justified was on the workman since he had caused on the reference or the reference had been made to the Industrial Tribunal by the Government at his instance. So the High Court set side the order of my Predecessor on this count alone. The question posed before his lordship was whether to allow the Writ Petition and to quash the order of my Predecessor or to remand the matter. In this regard his lordship observes that in a Writ Petition ordinarily a Court will not grant a relief to a respondent (workman) in a writ petition filed by the opposite party. However the fact remains that substantial justice is to be imparted and the Industrial Disputes Act is a beneficial piece of legislation enacted to give protection to the workman. This being so, in the particular circumstances of this case, we feel that an opportunity should be given to the second respondent meaning the workman to prove that the termination of his services was illegal and not justified." with these observations the High Court further held that "the employer will be entitled not only to cross-examine the workman and his witnesses but also to lead evidence in rebuttal if so desired". With these observations the matter is remanded back to the Tribunal and I have now to dispose of the matter according to law.

As stated in the foregoing paragraphs the workman is fighting his case himself and his only submission is that he was confirmed in service before the expiry of probationary period of 6 months and as such he cannot be dismissed from services without the issuance of a show cause notice or without the filing of a charge sheet and appointment of an Inquiry Officer. I think that this claim made by the workman is not proper and there are cases where even the confirmed workman or the workman who have put in service of more than a year can be dismissed without a departmental enquiry and the tribunal using its powers u/s 11A of the Act has to see whether the order of termination is

unjust, improper or illegal. I have carefully gone through the papers and I find that the order is perfectly legal and justified and there is no room for any doubt on this count. It is no doubt true that the order of appointment Exb. W-1 dated 31st May, 1982 says that period of probation will be 6 months but the management has reserved a right to extend the period if found necessary. This is a clause which does not go in favour of the workman but on the contrary it goes against the workman. Hence even if the workman is confirmed in services that by itself does not mean that he gets benefit to claim any right or lien over the services specially when he has just put up a service for 235 days. The facts on record do show that by virtue of the order of my Predecessor the workman who was probably serving elsewhere during the intervening period was getting a salary from the employer till July, 1987 and he got this full salary without rendering any service to the employer. This is an ex-gratia payment received by the workman and he got the benefit because the order was passed by my Predecessor in his favour and the order was valid in law until it was set aside by the High Court. This aspect has no direct bearing on the point involved in this case. However, I am considering this point for the limited purpose of seeing whether any injustice has been caused to the workman by virtue of the order of termination of the services and I find that no injustice of any sort has been caused to the workman and the management of M/s. V. N. S. Engineering & Services Co., have acted within the rights confirmed on them by virtue of the letter of appointment Exb. W-1 and they terminated the services of the workman on the ground that his work was not satisfactory and there is no rule of law showing that the management could not have terminated the services of the workman on the ground on unsatisfactory work. The workman did not acquire any right or obligation on the part of the management. On the contrary the letter dated 22-1-83 shows that the management had made full payment to the workman whose services were terminated on 22nd January, '83. As per this letter dated 22-1-83 the workman was paid the salary of Rs. 319.50 upto 22nd January, 1983, one month's notice pay of Rs. 450/- and encashment of 5 days privilege leave amounting to Rs. 72.60, total Rs. 840.10. All these shows that 'all legal dues were paid to the workman at the time of termination of his services and no injustice of any type was caused to him and this is not a case where the Industrial Tribunal should interfere in the matter of termination of the services. I therefore hold that the order of the termination is just and proper and I pass the following order:

#### ORDER

It is hereby held that the action of the employer M/s. N. V. S. Engineering & Services Company, Margao, Salcete, Goa in terminating the services of Shri P. S. Gurav, Sales Assistant w.e.f. 22-1-1983 is just and legal in the circumstances of the case. Consequently the workman is not entitled to any relief in this matter of Govt. reference.

There shall be no order as to costs. Inform the Government accordingly, about the passing of the award.

S. V. Nevagi  
Presiding Officer  
Industrial Tribunal.

#### Order

No. 28/33/85-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.  
Subhash V. Elekar, Under Secretary (Labour).

Panaji, 13th December, 1989.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/47/95

Shri Sebastian Fernandes — Workman  
V/s

The Chief Electrical Eng.,  
Office of the Electricity  
Department, Panaji. — Employer

Workman represented by Shri Subhas Naik.

Employer represented by Asst. Prosecutor, Smt. Shoba Dumaskar.

Panaji, Dated : 8-11-89.

#### AWARD

This is a reference made by the Govt. of Goa, by its order No. 28/33/85-ILD dated 16th October, 1985 with an annexure scheduled thereto which reads as follows :

"Whether Shri Sebastian Fernandes, Asst. Wireman of the Electricity Department, Government of Goa, Daman and Diu, Panaji is a workman as defined under the Industrial Dispute Act, 1947 (14 of 1947) ?

If the answer to the above question is in the affirmation, whether the action of the employer, the Chief Electrical Engineer, Government of Goa, Daman and Diu, Panaji-Goa, in terminating the services of Shri Sebastian Fernandes with effect from 13-9-1983 is legal and justified ?

If not, to what relief the workman is entitled to ?

After the above Govt. reference was received the matter was registered and notices were issued to the parties who appeared in the matter and filed their pleadings. This is a matter of termination of the services of a Government servant who belongs to the Electricity Department of the Govt. of Goa, and the parties to the



dispute are the Asstt. Wireman by name Sebastian Fernandes and the Govt. Electricity Department which is represented by the Chief Electrical Engineer. In this matter it has to be noted pertinently that the industrial dispute is raised by the union namely Goa Trade & Commercial Workers' Union because according to the Union the workmen working in the Electricity Dept., who were the members of the union were the workmen within the meaning of the term under the Industrial Dispute Act and as such the union had a right to raise an industrial dispute on behalf of its members. Hence in the written statement dated 4th December, 1985 the union had claimed that the electricity department which is an industry within the meaning of the term as defined in the I. D. A., buys electricity from outside Goa and sells the same to the consumers within Goa and this activity of the Electricity Department bring it within the ambit of the industry as defined in the Act. Now Sebastian Fernandes who worked as an Asst. Wireman in the Govt. Electricity Department has joined the services as a Lineman in the Margao office of the Electricity Dept., on 15-4-75 and at the time of the termination of his service he was working as Asst. Wireman on 13-9-82. The Electricity Dept., by a simple letter dated 11-8-82 (vide Exb. E-10) simply terminated the services of the Asst. Wireman at the expiry of one month by treating this as one month's notice. Hence there was a simple termination by a notice dated 11-8-82 by which the services of the workman were terminated w.e.f. 13-9-82 (the Govt. reference wrongly mentions the date as 13-9-83, this being a typographic mistake; on common consent the date of termination is assumed to be 13-9-82 without getting the necessary correction in the reference through Government). In the claim statement the main and important objection raised on behalf of the workman is that no charge sheet was issued to the workman who was alleged to have committed some misconduct and act of indiscipline on 22-4-82; the matter which was considered by the Electricity Department. It is the contention by the union on behalf of the union that the termination simplicitor by a notice dated 11-8-82 is in violation of the principles of natural justice as no opportunity was given to the workman to defend himself nor was he heard before the termination of his services. Hence according to the union the termination is illegal and unjustified because the workman is terminated after having put up a continuance service of over 7 years. Hence there is a basic objection to the "termination of the services due to misconduct", in a summary manner. The 2nd objection raised by the union is that this termination amounts to retrenchment within the meaning of the term u/s 25F of the Act and under sub-clause (1) no notice pay was paid and under sub-clause (b) no compensation was paid. According to the union the Elect. Dept., terminated the services of the workman who is a Govt. servant on the spacious ground that he is not a workman within the meaning of the term under I. D. A., 1947, and he being a Government servant his services are liable to be terminated as per the Government Servants Service Conduct Rules. Hence by terming the termination as unjustified and illegal

the workman claims for the back wages with a declaration of continuity of services.

To this the Electricity Department filed its written statement through its Chief Electrical Engineer dated 10-1-86. In this W. S. the preliminary objection was taken to the tenability of the Govt. reference on the ground that there is Central Administrative Tribunal to try the cases connected with conditions of services of the officials of other Government employees was established and that Tribunal shall try such cases of conditions of services of the Govt. employees. Hence the Electrical Department did contend that the Industrial Tribunal, Panaji has no jurisdiction to try the cases of the Government employees including Party I. Along with this basic objection the Electricity Department does concede the position of its activity to supply electricity to different consumers within Goa, but at the same time it objects to the contention that it is "an Industry" within the meaning of the Act. Keeping in line with this, it is further contented that Party I, S. Fernandes, the Asst. Wireman is not a workman and the department has no knowledge whether he is a member of a registered trade union. While countering the allegations that the services are terminated illegally it is contended that the workman was neither honest nor efficient in his work and they had listed the following instances of indiscipline committed by the workman.

- a. The Jr. Engineer, Varca-Carmona has given notice that maintenance work of Mobor transformer was not attended to by the workman.
- b. The workman had indulged in act of indiscipline on 22-4-82.
- c. The workman was a temporary Government servant and under Sub-Rule 1(a) of Rule 5 of C. C. S. (Temporary Service) Rules 1965. The services of temporary Govt. servant were liable to be terminated.
- d. The Executive Engineer, Margao reported on 21-7-82 that in mid 1982 the workman had released the electricity connection illegally without following the procedure and seeking the approval of higher authorities. When the workman was questioned about this, he in his statement dated 17-7-82 admitted the fact of illegal connection given by him in Jan., 1982.
- e. It was also brought to the notice of the Dept., that the workman had been engaged in doing domestic wiring work after giving illegal connection for consideration of Rs. 160/- in violation of Rule 15(i) of C. C. S. (Conduct) Rules 1964. The workman had thus engaged in trade or business in breach of rule 15(1) of C. C. S. (Conduct) Rules, 1964.
- f. One Magdaline Barreto of Carmona had complained that the wiring work was done in her house by the workman and the workman released the electricity to her in Jan., 1982.
- g. Smt. Nelcy George also of Carmona stated that subsequently she occupied the house and the house had the electricity supply.

The Jr. Engineer had held an enquiry and Meter Reader visited the house of Shri Santana George of Carmona and found that the house was given illegal connection which existed for 6 months before the inspection and Mrs. Nelcy George confirmed this. She was not getting any electricity bills for the consumption but she had paid charges for wiring and service connections etc. The electric fitting of the wiring was done by the workman. The workman when questioned about this on 17-7-82, admitted that he had carried out the wiring of the house in May, 1982 and received Rs. 100/- as labour charges and Rs. 60/- as service connections charges which were not deposited with the Govt. He also admitted to have released the service connection by using departmental insulated wires without putting meter on 16-5-82. He had not informed his superiors about having given the service connection and he admitted that the connection given by him was illegal.

By citing all these examples it is contended by the Electricity Department that the services of the workman are terminated after due enquiry and there is no question of granting any compensation as contemplated u/s 25F of the Act. After the issues, my Predecessor framed a preliminary issue on 2-4-86. "Whether this tribunal has no jurisdiction to entertain this reference, in view of the establishment of the Central Administrative Tribunal". After the preliminary issue was framed and while the matter was pending for the hearing of the preliminary issue my Predecessor Shri Noronha retired in June, 1986 and after I took over on 10-11-87 I fixed the matter for recording of the evidence on the point of preliminary issue. The matter as regards the preliminary issue was heard before me and the evidence of RamKrishna G. Bhatt, Asst. Engineer posted at Margao in the Carmona section was recorded on 12-6-89. Thereafter submissions were heard on the preliminary issue and I by my order dated 24-2-88 did hold that the workman S. Fernandes, Asst. Wireman of the Electricity Department is a workman as defined under the Industrial Dispute Act and this Tribunal has jurisdiction to proceed further in the matter and the matter was adjourned for full-fledged hearing. Thereafter the matter was adjourned from time to time for further hearing the matter and no evidence was recorded in the matter and the matter was argued over the question of the legality or otherwise of the order of termination.

In his arguments dated 29-9-89 Shri Subhas Naik for the union and the workman did make out two points on behalf of the workman. According to him the notice of termination was issued on 11-8-82 terminating the services on 13-9-82 — Exb. E-10. This was a notice of one month and this is a simple matter of termination. According to him, there was an allegation of misconduct against the workman. In that case there ought to have been a show cause notice issued to the workman and thereafter a charge sheet was to be filed and in due course departmental enquiry was to be conducted against the workman. Nothing of this sort has been done and this is a case of termination simplicitor and when there is a charge of misconduct there should have been a proper departmental enquiry and as there is no

enquiry held against the workman and as no notice nor retrenchment compensation as laid down u/s 25F of the Act was paid to the workman, he relies on the principles laid down by the Supreme Court in 1975 (II) LLJ page 499 and claimed that the workman should be reinstated into services.

In reply to this Smt. Shoba Dumaskar, Asst. Government Pleader and Advocate appearing for Electricity Department did maintain that the workman is a temporary Government servant and the very appointment letter shows that so long as he was temporary in service he was liable to be terminated from services after one month's notice. According to her the Department had held an enquiry about the misconduct of the Asst. Wireman way back in 1982 and the proper and legal action was taken by issuing a letter of termination simplicitor by giving one month's notice and according to her this is perfectly legal and justified. When she was questioned about the result of the speaking order passed by this Tribunal holding the workman/Asst. Wireman to be workman within the meaning of the Industrial Disputes Act. She contended before me that the Tribunal has passed the order in Feb., 1988 and the Govt. had already terminated the services in 1982 and as such the order has no bearing on the original order of termination issued by the Electricity Department to a Government servant and whose services were liable to be terminated, being a temporary servant by just one month's notice. This is the sum and substance of the arguments made by her on behalf of the Electricity Department and she had nothing to say about the point raised by Shri Subhas Naik about the absence of show cause notice, charge sheet and domestic enquiry and she simply reiterated that the action of the Electricity Department is just and proper and the same does not call for any interference.

With these points raised in the arguments I have now to see the two parts of the Government reference. As per the first part it has to be decided whether S. Fernandes, Asst. Wireman is a workman as defined under the Act and in view of the preliminary issue already framed by my Predecessor I have already recorded a finding to that effect. As this finding has gone unchallenged we have to start with the supposition that this is a case of a workman working as Asst. Wireman in the Electricity Department of the Govt. of Goa and it has now to be seen whether the action of the Chief Electrical Engineer, Govt. of Goa, in terminating the services of S. Fernandes w.e.f. 13-9-82 (the reference wrongly gives the date as 13-9-84) is just proper and legal in the circumstances of the case and with the background and with the almost admitted position that the workman was proved to have violated the rules of the Electricity Department but no domestic enquiry as such was held against him by issuing a charge sheet and by appointing an Inquiry Officer. This is the main point raised by Shri Subhas Naik on behalf of the workman and strong reliance is placed by him on the observations of the Supreme Court in the aforesaid judgment. I shall first study the legal position obtaining in this case.

This is a case where there is the evidence of the workman on one side and the evidence of the Asst. Engineer on the other side and the record regarding the complaints and allegations against the workman who acted in breach of the rules of the Electricity Department. The workman almost admits the allegations made against him and for that purpose I shall go through the replies given by him in the cross examination. He admits that as a Lineman it was his duty to repair and service the electrical lines for supply of electricity to the consumers. As he was a Government servant in the regular pay and salary of the Government he had no right to work privately as a lineman or as a wireman even if he possessed the knowledge of a electrician. He admits that he had done work of wiring and fixing the meter in the house of S. George. He also admits that he has made use of the wire for the fitting but he denies that he made use of the Govt. insulated wire. He further admits that he charged that person Rs. 100/- as labour charges and Rs. 60/- as service charges. This is in clear violation of the rules made by the Electricity Department. In order to overcome this charge he states that even though he took Rs. 100/- as wiring charges he paid that amount to another person but obviously there is no evidence to support this. He also admits that as per the Rules he was not supposed to undertake any private jobs. About the meter charges he admits that he charged Rs. 60/-. When subsequently he was questioned about it, he stated that he paid the amount by two instalment after he was questioned by the Jr. Engineer S. Usgaonkar who recorded his statement. His statement was recorded by S. Usgaonkar and that statement is at Exb. E-14 and this statement is the full admission of the lapses and indiscipline by the workman. Therein he admits that he carried out the wiring of the house of Santana George in Carmona in May, 1982, that he took Rs. 100/- as labour charges and Rs. 60/- towards the payment of services connection charges. He further admits that he released the service connection by using department's insulated wires without putting the meter. This he had done on 16-5-1982. He had taken Rs. 60/- from the person for giving service connection but he had not deposited the money in the Govt. department. He also admits that he had given the service connection and had done the electric fitting without the knowledge and information of his superiors namely either the Jr. Engineer or the Asstt. Engineer. When this was detected he was asked by the Asstt. Engineer on 14-7-82 to pay the service connection charges immediately and to report. He paid this amount in two instalments. In his statement dated 12-7-82 he admits that till then the meter for energy consumption was not fixed. Hence on his own admission the person who had taken the electric fitting was consuming the electricity without being liable to pay the charges to the Department. Lastly he admits that he had given the connection illegally. This is the sum and substance of the statement and he also admits the same in his evidence recorded on the court.

As against this evidence of the workman the Asstt. Engineer RamKrishna Bhatt states that he received a report from the Jr. Engineer at Carmona on 13-7-82

that illegal connection was given to one house at Carmona. He therefore went to Carmona along with Jr. Engineer for inspection. They noticed that the house of one Santana George was illegally illuminated by giving electric connection. They went and verified the facts and found that there was electric fitting inside the house. The wife of the owner by name Nancy George told them that the Asst. Wireman, Sebastiao Fernandes has done the electricity fitting. He then states about the procedure and rules for giving electrical supply for domestic consumption. The intending subscriber has to make an application and the office has to verify the contents of the application and then grant the electric connection. After the order is passed the matter is then given to Jr. Engineer and then to Asst. Engineer and the intending subscriber is asked to deposit the prescribed amounts. Only then the connection is given to the subscriber. Thereafter under the supervision of the Jr. Engineer the Asst. Lineman gives connection to the subscriber. In the instant case we find that this procedure and rule is flawed by the workman S. Fernandes admittedly. He verified from the record that Santana George had filed the application to the office in January, 1982 and while the application was lying in the office S. Fernandes gave the electricity connection privately. He further states that actually this application was taken by S. Fernandes from Santana George, had kept the application with him and had not forwarded the same to the office for further action. The applicant had not deposited the prescribed fees and still the electrical connection was given to him. The Asst. Lineman was questioned about this and he admitted to have taken the money and not deposited in the office. The money was not deposited till July, 1982 when he and the Jr. Eng., inspected the house and found that there was electric connection given to the owner. Hence he recorded a statement of the Asst. Lineman which is at Exb. 14 and the Asst. Lineman Sebastiao Fernandes has admitted to have given the connection; clandestinely. He had therefore to regularise the matter by asking the subscriber to deposit the money and thereafter to follow other formalities. A pertinent thing to be noted was that the connection was given by using departmental wires and that too without energy meter showing the consumption of energy. He further explains that the meter is required for measuring the electricity by the subscriber and in the absence of such a meter there is no record showing how much electricity was consumed by the subscriber and the receipts for electricity consumption cannot be issued without reading the meter. He lastly states that the Lineman had no authority to give the electricity connection without specific instructions from the office. This is what he states in his evidence. In his cross examination it is questioned whether a departmental enquiry was held against the Asst. Lineman. He states that he did not issue any memo to the Asst. Lineman, S. Fernandes but he just made a report to the superiors. It is suggested to him that in the absence of any enquiry conducted against the workman all allegations are false. Hence the trend of cross examination also indicates that the fact that there were lapses on the part of the workman, that he ad-

mitted his act of dereliction of duty by giving the statement Exb. E-14 are conceded on behalf of the workman but they have to challenge the report because no show cause notice nor any memo was issued to the workman and no domestic enquiry was held and conducted against him.

This is how we find that this is a case where the charges of dereliction of duty amounting to misconduct are proved against the workman by leading cogent evidence in the court but this is a case where no charge sheet nor any show cause notice is issued to the workman. Pointing to all these facts Shri Subhas Naik submitted on behalf of the workman and the union that this is a case of retrenchment of workman u/s 25F of the Act and this is a case where there is no payment of compensation at the time of retrenchment. Hence in fact non payment of compensation at the time of retrenchment to the workman u/s 25F of the Act means continuance of employee employer relationship. Hence holding this line of arguments further he claims that this is a matter of illegal order of retrenchment and the effect of invalid order of retrenchment has to be considered by the Tribunal which has to act within the framework of mandatory provisions of law as laid down by (1) Legislature viz. Section 25 of the Act and (2) the law as laid down by the Supreme Court in various rulings. In the above Supreme Court Case reported in 1975 II, LLJ, page 499, the Supreme Court has held that the refusal by the Tribunal to grant the relief of reinstatement and granting compensation was not proper. There are also Supreme Court cases which are discussed in the above case to hold that the Tribunal ought to have granted the relief of reinstatement without granting compensation. I feel that the above cases refer to Sec. 25F of the Act, but the present case does not fall within the perview of the Sec. 25F of the Act and this is a case which falls u/s 11A of the Act. After Shri Subhas Naik made his arguments on the point of domestic enquiry and the effect of the absence of the domestic enquiry Smt. Dumaskar the learned Asst. Government Pleader was asked to elaborate on this point and she in her rhetoric she did say that the termination was made in 1982 while the Tribunal gave a decision that S. Fernandes was a workman in 1988 and as such the order of termination is just and proper. It appears clearly that the learned Advocate working on the Civil side had not properly studied the Industrial Act and she lost sight of the fact that this was a matter being conducted in the Industrial Court and the relevant provisions to be considered are Sec. 25 as regards retrenchment and Sec. 10 and 11-A as regards the termination of the services of an industrial workman. This is how she has failed to properly make submissions on behalf of the Electricity Department in this matter where admittedly there is no domestic enquiry held against the workman even though there was sufficient evidence to prove the charge of indiscipline against the workman. The question then is whether the action of the Electricity Department in terminating the services of a dishonest Asst. Lineman should be branded as illegal simply because no domestic enquiry was held against the workman before terminating his

services. In this regard I feel that the proper section which is applicable and which is to be considered is Sec. 11A of the I. D. A. and this section is inserted by Industrial Disputes (Amendment Act of 1971). Till then there were many rulings of the High Courts and Supreme Courts giving certain directions regarding the right and discretionary powers of the Labour Court and Industrial Tribunal and by this amendment the Legislature has made the position clear and a good deal of case law is developed on this point. So far as Sec. 11A reads if the Tribunal finds that the order of discharge or dismissal was not justified the Tribunal by its award may set aside the order of discharge or dismissal and direct reinstatement of the workman on certain conditions. So by this Section the Tribunal has been given powers to go through the record and proceedings and to see whether the dismissal of the workman by the employer is just and proper in the given circumstances. As per the proviso the Tribunal has to rely on the materials on record and it shall not take any fresh evidence. There are many cases on the point of misconduct and there are Industrial Employment (Standing Orders) and the Standing Orders have laid down which acts and omissions shall be treated as misconduct and under sub-clause (b) fraud and dishonesty in connection with the employer's business, taking or giving bribes or illegal gratification are held to be instances of misconduct. While studying what are the acts of indiscipline a Division Bench of Bombay High Court has laid down in the case of Sharada Prasad Onkar Prasad Tewari v. Central Railways, reported in 1960, I, LLJ, page 167 that "an act or conduct inconsistent or incompatible with the due or faithfully discharge of duties amounts to indiscipline". When such acts of indiscipline or misconduct comes to the notice of the employer the question is whether the employer has a right to straight away dismiss the workman. When the management takes the responsibility to level the charge of "misconduct" there must be material in support of such a serious charge and in the case of J. J. Modi v. State of Bombay, reported in A. I. R., 1962 Guj. page 197, a Division Bench of the Bombay High Court has held that an employer is entitled to dismiss his employee for various reasons and one of the reason is 'where the act or conduct of the employee is such that the master cannot rely on the faithfulness of his or its employee and that the conduct of the employee was open for temptations for not discharging his duties properly'. 'So the misconduct of an industrial employee can be a good ground for dismissal from service but the question is whether any procedure should be followed before issuing the order of discharge or dismissal and there are many authorities on the point of domestic enquiry in industrial law. In many cases including the of quoted case of Rohtas Industries Ltd. v. Ali Hasan reported in 1963, I, LLJ, page 253, the Supreme Court have stated that an enquiry is not an empty formality but it is essential condition to the legality of the disciplinary order. In other words it means that a fair and regular enquiry should be held into the misconduct and for that purpose there should be a proper enquiry held against the workman. This is the cardinal principle as regards the holding of a domestic enquiry.



However, there are cases where there is no enquiry at all or where the enquiry which is held is defective. In this regard there are 3, 4 cases of the Supreme Court which give us proper guidance as to the necessity and requirements of a domestic enquiry. I shall analyse the principles laid down in those cases one after the other.

In the case of Central Bank of India v. Karunamoy Banerjee, reported in 1967, II, LLJ. page 739, the Supreme Court have held that "where the workman is to answer the charge levelled against him, and where the workman admits his guilt, there will be nothing more for the management to enquire into such guilt and in such a case holding of an enquiry would be a mere empty formality". The observations in this case apply aptly to the facts of the present case. In the instant case by virtue of Exb. E-14 we have the admission of the workman of the act of indiscipline and all his flouting the mandatory rules as regards the electric connection and in view of the admissions it appears that there was no necessity of holding an enquiry which would have been more or less an empty formality. There are also other cases on this point as regards the 'no enquiry' or as regards the enquiry which is 'defective'. In many cases reported at page 806 in the book of O. P. Malhotra on the Law of Industrial Disputes and the case of Sasamusa Sugar reported in 1959, II, LLJ. page 388 the Supreme Court has stated that "in case where the enquiry has found to be invalid or where there is no enquiry at all the Tribunal may give an opportunity to the employer to prove his case and in doing so the Tribunal itself tries the case on merits". The ratio of these cases is that where the domestic enquiry held by the employer is found to be invalid by the industrial tribunal or no enquiry at all has been held by the employer, the action of dismissal may still be sustained by the employer by justifying it before the tribunal by adducing relevant evidence. This is what has exactly happened in the instant case. This is a case where there is no domestic enquiry held by the employer at all. All the same the employer has led evidence before the Tribunal showing the case of indiscipline committed by the workman and on his own admission the workman was dishonest and he had indulged in the act of giving electric connection without following the proper formalities or without installing a meter for reading the domestic consumption. This is a matter where we are dealing with the acts of indiscipline committed by the Asst. Lineman who is an important part of the setup of Electricity Department and it is always supposed or presumed that these persons act with honesty and integrity. Here the workman on his own admission is dishonest and he has resorted to unfair practice by giving illegal connections. The question then is whether the Tribunal should direct the reinstatement of such a dishonest person simply because there is no domestic enquiry held against the workman. On facts of the case at the cost of repetition it can be stated that even though there was no regular domestic enquiry as such the high ranking officer of the Electricity Department had conducted the enquiry against the workman, had taken

his statement in writing about the act of dishonesty and thereafter he had made a report to the Chief Electrical Engineer, who acting on his report and after perusing the statements of the workman had issued the order of termination which was a notice of one month. According to the Electricity Department the workman who was a Government servant was a temporary Government servant who was governed by the C. C. S. (Temporary Service) Rules 1965 and his services were liable to be terminated by a notice issued by the appointing authority. Hence the employer namely the Chief Electrical Engineer had acted by relying on the above rules and the question is whether he acted in an arbitrary manner, whether he acted in bad faith and whether this was a case of victimisation. I find that there was no such thing and all has happened during the course of the official conduction of the departmental discipline and the notice of termination dated 11-8-82 was the culmination of the departmental enquiry giving the workman a notice of one month for which he was paid salary. So it appears that this is a case where there is no domestic enquiry held against the workman but at the same time the employer had justified the action of dismissal by leading proper evidence as regards the act of indiscipline. So it appears from the facts of the case that the absence of a domestic enquiry does not alter the position and it cannot be said that the action of the employer is bad in law. The consensus of the view of the Supreme Court is that the case of defective enquiry were equated with no-enquiry cases and as observed in the case quoted above reported in 1965 II, LLJ. page 162 the Tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal was proper. I have carefully gone through the above facts of the above case and I have come to an irresistible conclusion that the Tribunal has to consider the case by studying the principles of Sec. 11A of the Act and it has to use its discretionary powers to see whether the order of discharge or dismissal was not justified or otherwise. In the instant case I find that this is a case of a dishonest Asst. Lineman who on his own admission had indulged in the acts of giving private connections for domestic consumption of electricity without installing the necessary meter and this is how he has caused immense loss to the electricity department which acting on the reports of dishonesty received against the workman for a period of 5, 6 years took a decision to terminate the services of the workman by issuing a notice for one month. I do not think that this action of the Chief Electrical Engineer is anyway unjust or improper. The Union had raised the industrial dispute on behalf of the workman and the Government had made the reference to record a finding on two points. As regards the first point I have already held that the Asst. Lineman of the Electricity Department is a 'workman' as defined under the I. D. A. While considering the second part of the Govt. reference after answering the first part in favour of the Asst. Lineman the Tribunal is called upon to say whether the action of the employer namely the Chief Electrical Engineer, Government of Goa, in terminating the services of the Asst. Lineman

Shri Sebastiao Fernandes is legal and justified. I have already gone through the evidence on record in minute details and I have come to an irresistible conclusion that the action in terminating the services of the dishonest Asst. Lineman is just and legal. I, therefore, answer the Government reference as below :

**ORDER**

It is hereby held that the Asst. Lineman Shri Sebastiao Fernandes of the Electricity Department of Govt. of Goa is a workman as defined under the Industrial Disputes Act.

About the action of the employer it is hereby held that the action of the Chief Electrical Engineer, Govt.

of Goa, in terminating the services of Shri S. Fernandes, Asst. Lineman, with effect from 13-9-82 is just and legal in the circumstances of the case. Consequently the workman is not entitled to any relief in this matter of Govt. reference.

There shall be no order as to costs. Inform the Govt. accordingly about the passing of the award.

**S. V. Nevagi**  
Presiding Officer  
Industrial Tribunal